

§ 432.104

5 CFR Ch. I (1–1–22 Edition)

to meet established performance standards in one or more critical elements of such employee's position.

[54 FR 26179, June 21, 1989, as amended at 54 FR 49076, Nov. 29, 1989; 55 FR 25950, June 26, 1990; 57 FR 23045, June 1, 1992; 57 FR 60717, Dec. 22, 1992; 58 FR 65534, Dec. 15, 1993; 60 FR 43946, Aug. 23, 1995; 85 FR 65982, Oct. 16, 2020]

§ 432.104 Addressing unacceptable performance.

At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency should also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. The requirement described in 5 U.S.C. 4302(c)(5) refers only to that formal assistance provided during the period wherein an employee is provided with an opportunity to demonstrate acceptable performance, as referenced in 5 U.S.C. 4302(c)(6). The nature of assistance provided is in the sole and exclusive discretion of the agency. No additional performance assistance period or similar informal period shall be provided prior to or in addition to the opportunity period provided under this section.

[85 FR 65982, Oct. 16, 2020]

§ 432.105 Proposing and taking action based on unacceptable performance.

(a) *Proposing action based on unacceptable performance.*

(1) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance

pursuant to § 432.104, an agency may propose a reduction-in-grade or removal action if the employee's performance during or following the opportunity to demonstrate acceptable performance is unacceptable in one or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance. For the purposes of this section, the agency's obligation to provide assistance, under 5 U.S.C. 4302(c)(5), may be discharged through measures, such as supervisory assistance, taken prior to the beginning of the opportunity period in addition to measures taken during the opportunity period. The agency must take some measures to provide assistance during the opportunity period in order to both comply with section 4302(c)(5) and provide an opportunity to demonstrate acceptable performance under 4302(c)(6).

(2) If an employee has performed acceptably for 1 year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which the employee was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the agency shall afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of unacceptable performance which occur within a 1 year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) The agency shall afford the employee a 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An